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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,806

03/10/2004

Gilles Dumont

2308-5A

4514

7590

09/15/2006

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/797,806

Applicant(s)

DUMONT, GILLES

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 5 is/are rejected.
- 7) ☐ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: translations in English of SU 1519595 A1 and DE 2639088 A1.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markovets et al. (SU 1519595 A) in view of Knappe et al. (DE 2639088 A1).

As to claim 1, Markovets et al. discloses a rotary growing apparatus (see Fig.) comprising a single ring (3 of Fig. 3); a support means for the ring (not shown but implicit since the ring is vertical in the Fig.); means for rotably driving the single ring about a rotational axis of the ring (from "drive" of abstract in English), the rotational axis being horizontal (shown in middle of Fig. 1); a plurality of medium retaining members (5 of Fig.) extending transversely of the ring (see Fig.), each of the plurality of medium retaining members being secured to the ring (see Fig.); and, at least one light source interiorly of the ring (see Fig. for light source in center of ring); and, a liquid feeding means (9 and inside of outer wheel of Fig.) designed to feed liquid to the plurality of medium retaining members while the apparatus is rotating. Not disclosed is the feeding in the upper quadrant of its rotation. Knappe et al., however, discloses feeding of medium retaining members from above (6 of Fig. 1) which would be the upper quadrant. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify

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the apparatus of Markovets et al. by using the liquid feeding means of Knappe et al. so as to not douse the plants and flood the soil so as to promote better plant growth.

As to claim 2, the limitations of claim 1 are disclosed and described above. Not disclosed is the plurality of medium retaining members removably secured to the single ring by a clip mean. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Markovets et al. as modified by Knappe et al. by using a clip means to attach the medium retaining members depending upon

As to claim 4, the limitations of claim 3 are disclosed and described above. Not disclosed are apertures formed on the back of the retaining members. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Markovets et al. as modified by Knapp et al. by adding drainage holes in the retaining members so as to not saturate the soil.

As to claim 5, the limitations of claim 1 are disclosed and described above. Not disclosed is the ring make of ring segments with attachment means. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Markovets et al. as modified by Knapp et al. by making the ring adjustable with ring segments so as to fit in varying spaces.

***Allowable Subject Matter***

Claim 6 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Claim 7 is allowed over the art of record.

***Response to Arguments***

Applicant's arguments filed 3 May 2006 have been fully considered but they are not persuasive. Applicant's argument is that in Knappe et al.'s invention the containers are rotated horizontally (Remarks bottom of page 4). Since Markovets et al. discloses a vertically rotating system with an irrigation system and Knappe et al. discloses a horizontally rotating system with an irrigation system the two are combinable because they are in the same art area. One of ordinary skill in the art would find it obvious to substitute one irrigation system for another.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brusatore discloses a rotary growing apparatus.

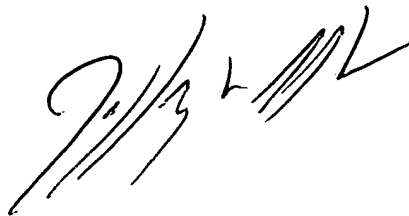
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner  
Art Unit 3643